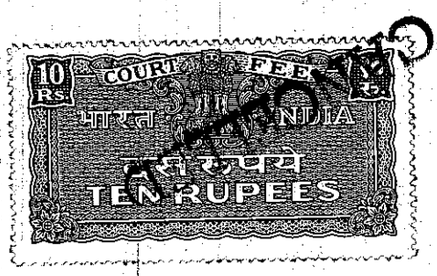

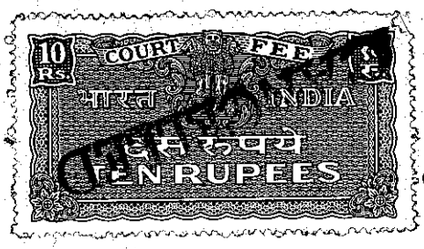

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

S.A. 123/03

Misc. Appeal No. 172 of 2001

P. R. No. 600/01
Presented by Shri A.S. Gahankari
Dated ...11..Aug.01.....

Superintendent
of Post Offices
Head Post Office,
Bilaspur Chhattisgarh ...Appellant/Non - Applicant

Versus

Smt. Leela Tiwari
W/o Late Shri S. P; Tiwari
R/o Gole Bazaar
Near City Kotwali,
Bilaspur, Chhattisgarh ....Respondent/Applicant

SECOND APPEAL U/S 32 OF THE M. P. ACCOMMODATION CONTROL ACT 1961

(+8) (94) A.F.R.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Second Appeal No. 123/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	21.04.2006 Shri SK Beriwal, counsel for the appellant. Shri Rajeev Shrivastava with Shri Naresh Kumar Singh, counsel for the respondent. Heard on admission. Appellant to run Sub-Post Office at Gole Bazar, Bilaspur and for residence of Sub-Post Master, hired the accommodation owned by the respondent under a written lease deed for the period from 17.07.1990 to 16.07.1995 on a monthly rent of Rs.2000/-. After expiry of the lease period, respondent called the appellant to propose fresh rate of rent if willing to continue in possession over the building or else to evict the same vide her letter dated 04.08.1995, but the same was not replied by the appellant, therefore, she served the appellant with registered legal notice dated 19.08.1998 expressing her intention, that if lease is to be continued, the rate of rent shall be Rs.6,000/-, per month otherwise, to vacate the building, but the appellant did not pay any heed to it, and after four years, vide letter dated 09.08.1999, arbitrarily, without adopting any due procedure fixed the rent at Rs.2,600/- per month to which respondent did not agree and accordingly, sent her reply. Thereafter, respondent / landlord Smt Leela Tiwari filed an application under Sections 8 read with Section 10 (4) of the Chhattisgarh Accommodation Control Act 1961 (henceforth "the Act") for enhancement of rent before Rent Controlling Authority, Bilaspur,	

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(119) (95)

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

bearing case No.1/99-2000. After service of notice on appellant / tenant, Rent Controlling Authority (henceforth "the Authority") vide order dated 31.03.2000 allowed the application and enhanced the rent and fixed the rent at Rs.6,000/- per month.

The appellant / tenant aggrieved by that order filed an appeal under Section 31 of the Act, along with an application for condonation of delay in filing the appeal before the District Court Bilaspur. After affording due opportunity to both the parties, VI Additional District Judge, Bilaspur heard the application for condonation of delay in filing the appeal and vide impugned order dated 09.02.2001 held that no sufficient cause has been pleaded and established by the appellant for condonation of delay rejected the said application and accordingly dismissed the appeal being barred by limitation. Being aggrieved by that impugned order, this second appeal under Section 32 of the Act has been filed.

Section 32 of the Act reads as below :

> "32. Second appeal :- A second appeal shall lie against any order passed in first appeal under section 31 on any of the following grounds and no other, namely :-
>
> i) that the decision is contrary to law or usage having the force of law; or
>
> ii) that the decision has failed to determine some material issue of law; or

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

iii) that there has been a substantial error or defect in the procedure as prescribed by this Act, which may possibly have produced error or defect in the decision of the case upon merits."

Here, in the instant case, the application for condonation of delay in filing the appeal, after affording due opportunity to both the parties has been rejected by the First Appellate Court and accordingly the appeal was dismissed. Therefore, this Second appeal can lie if it can be demonstrated that the decision arrived at by the First Appellate Court is contrary to law or usages having the force of law.

Section 31 of the Act envisages provisions for condonation of delay in filing the appeal and according to that provision; the judge may for sufficient reasons allow an appeal after the expiry of the said period. Admittedly, in original proceeding before the authority appellant was served with a notice who did not actively participate in the proceeding and remained absent, therefore, in his absence, the final order dated 31.03.2000 was passed by the authority. Being aggrieved by the order passed by the Authority on 31.03.2000, appeal under Section 31 of the Act along with application for condonation of delay, on the ground that on 20/07/2000 appellant came to know the order dated 31.03.2000 passed by the Authority, who received the copy on 07.12.2000 and after receipt of the copy, within 30 days filed the appeal. His application was vehemently opposed by the respondent. Learned Appellate Court, after

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reported in AIR 2001 SC 2497 & Vedabai @ Vaijayantabai Vs Shantaram Baburao Patil and others reported in AIR 2001 SC 2582 contended that the appellant is a public authority where file moves from table to table; therefore for condonation of delay, liberal view should have been taken by the Court.

On facts, both the cases are distinguishable with the instant case. That apart, in the second appeal till it is demonstrated that the order passed by the First Appellate Court is contrary to law or usages having the force of law the appeal does not lie for hearing. Here in the instant case, it is evident that the appellant failed to plead and establish any reason why he could not come to know the order passed by the authority on 31.03.2000 though it was served with notice in the proceedings and who also gave a solitary appearance. Appellant has also not pleaded as to why he willfully remained absent from the proceedings and why he did not endeavour to know the order passed by the authority in time. That apart, from 20.07.2000 to 27.07.2000 why application for copy had not been made; neither pleaded nor proved. Learned First Appellate Court after due consideration properly and correctly held that no sufficient cause for delay from 31.03.2000 to 20.07.2000 and from 20.07.2000 to 27.07.2000 has been made out by the appellant. Therefore, correctly rejected the application for condonation of delay and accordingly, dismissed the appeal.

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due appreciation of material on record, recorded the finding that the appellant for the period from 31.03.2000 to 20.07.2000 and further from 20.07.2000 to 27.07.2000 failed to plead and establish sufficient reasons for condonation of delay.

Under Section 31 of the Act, period of 30 days has been prescribed for filing of appeal from the date of order passed by the Authority. Here, in the instant case, the appellant was served with notice in proceeding before the Authority. Appellant appeared through his counsel on 11.02.2000 before the Authority and thereafter by their own accord, remained absent from taking part in the proceeding; therefore, in such circumstances, for counting the period of limitation, date of knowledge cannot be accepted to be the starting point for reckoning the period of limitation. In these circumstances, why the appellant absented himself from taking part in the proceeding before the Authority and how he could not come to know the order when it was passed, was required to be explained. But appellant did not explain as to why despite service of notice and after giving solitary appearance before the Authority, it willfully absented from the proceeding and up to 20.07.2000 why appellant did not endeavour to know the order passed by the Authority, have not been unveiled, therefore, appellant failed to explain any reason for causing delay from 31.03.2000 to 20.07.2000.

Learned counsel for the appellant relying on judgments rendered by Hon'ble Apex Court in the matter of **MK Prasad Vs P Arumugam**

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	I am of the opinion that the decision passed by the First Appellate Court is not contrary to law or usages having the force of law. Therefore, under Section 32 of the Act, this Second Appeal does not lie and hence it is dismissed summarily. In the light of above order, M.(C.)P.No.391/2001, IA Nos.2741/2003 & 2657/2004 stand disposed of. Sd/- V.K.Shrivastava Judge	

padma

YOGENDRA SINGH KANWAR
Digitally signed by YOGENDRA SINGH KANWAR
Date: 2025.04.28 15:11:58 +0530

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